

BOARD OF APPEALS CASE NO. 5493

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BEFORE THE

APPLICANTS: DeLynn & Sumie Linnett

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ZONING HEARING EXAMINER

REQUEST: Variance to locate an attached garage
within the required side yard setback

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 5/25/05 & 6/1/05

HEARING DATE: July 27, 2005

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Record: 5/27/05 & 6/3/05

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ZONING HEARING EXAMINER'S DECISION

The Applicants, DeLynn Linnett and Sumie Linnett, are requesting a variance pursuant to Section 267-36B, Table V, of the Harford County Code, to allow an attached garage within the required 10 foot side yard setback (8 foot setback proposed) in the R2/COS District.

The subject parcel is located at 737 High Plain Drive, Bel Air, Maryland 21014-5248, in the Third Election District, and is more particularly identified on Tax Map 49, Grid 4A, Parcel 844, Lot 10F. The parcel contains approximately 0.242 acres more or less.

The Applicant, Mr. DeLynn Linnett, appeared and testified that he and the Co-Applicant are the owners of the subject property. He stated that he read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein. Mr. Linnett described his property as slightly smaller than other lots in the neighborhood due to the back rear corner being cut off at an angle on one side. He also indicated that his house sits 3 to 4 feet higher than those on adjacent parcels. The subject property is improved by a two-story, single-family dwelling, a concrete two-car parking pad and a shed.

Mr. Linnett testified that he is the original owner of the property. When the house was constructed, he could not afford to build a garage, so he asked the contractor to site the house to allow for the later addition of an attached two-car garage. The contractor did offset the house, but left only an 18 foot side yard setback, rather than the 20 feet needed to build an attached two-car garage. The witness further indicated that the majority of his model homes in the neighborhood have attached two-car garages.

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The Applicants propose to construct a 20 foot wide attached two-car garage, which as a result of the original incorrect placement of the home by the contractor, will encroach 2 feet into the side yard setback. A blueprint of the proposed garage was submitted with the application. The side wall of the proposed addition would be approximately 8 feet from the side property line, and approximately 33 feet from the closest dwelling. Due to the 3 to 4 foot increase in elevation between his property and the adjoining property, the Applicant testified that the lot could easily be landscaped to reduce visibility of the proposed addition.

The witness described several photographs, included in Attachment 9 to the Department of Planning and Zoning's Staff Report. The photographs on the last page of that Attachment depict two houses which are the same model as his home, and one additional dwelling, all of which have attached two-car garages. He further testified that there are other similar two-car garages located within his community. The proposed garage will be compatible with both the existing dwelling and with other homes in the neighborhood. Mr. Linnett also testified that the proposed addition will have no adverse impact on adjacent properties.

Mr. Dennis Sigler, Coordinator, Zoning & Board of Appeals Review, appeared and testified for the Department of Planning and Zoning regarding the findings of fact and recommendations made by that agency. He indicated that the Department had reviewed the property and the subject request, and recommended approval of the application in its June 9, 2005 Staff Report, subject to conditions set forth therein.

According to the witness, the property has a unique shape, and unique topography. While most parcels in the neighborhood are level, the subject parcel sits 3 to 4 feet higher than surrounding properties, and has elevation changes at both the side and rear of the lot.

The witness noted that the Applicant's residence was designed for an attached two-car garage, and that most of the other houses in the neighborhood have attached garages. Because homes in Applicants' neighborhood are not allowed to have detached garages, the Applicants' only option if they are to build a garage, is to construct an attached garage.

No witnesses appeared in opposition to the requested variance.

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CONCLUSION:

The Applicants, Delynn Linnett and Sumie Linnett, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow an attached garage within the required 10 foot side yard setback (8 foot setback proposed) in the R2/COS District. The proposed addition would reduce the side yard setback to 8 feet. Harford County Code Section 267-36B, Table V, Design Requirements For Specific Uses in an R2/COS District, provides for a minimum 10 foot side yard width.

Section 267-11 of the Harford County Code permits the granting of variances, stating:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals set forth a two prong test regarding variances in the case of *Cromwell v. Ward*, 102 Md. App. 691, (1995). First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a peculiar characteristic or unusual circumstance, relating only to that property, causes the zoning ordinance to impact more severely on the property than on surrounding parcels. *Cromwell, supra*, at 721. If the subject property is found to be unique, the hearing examiner may proceed to determine whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The parcel is configured differently, and has unique topography when compared to other properties in the neighborhood. Thus, the first prong of the Cromwell test has been met.

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Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create unreasonable hardship or practical difficulty for the Applicants in the subject case. The Hearing Officer finds that literal enforcement of the Code would result in practical difficulty for the Applicants. Detached garages are not permitted in their neighborhood. The contractor mislocated their home, making it impossible for them to construct an attached two-car garage without obtaining a variance. The Applicants' home is designed for an attached two-car garage. Most of the other homes in their neighborhood have attached two car garages. Failure to grant the requested variance would result in the denial to Applicants, of property rights commonly enjoyed by others homeowners in their neighborhood.

The Hearing Examiner finds that the granting of the requested variance will neither be substantially detrimental to adjacent properties, nor materially impair the purpose of the Code or the public interest. The proposed garage will be compatible with both the existing dwelling and with other properties in the neighborhood. Many other houses in the neighborhood have attached two-car garages. The proposed addition would encroach only 2 feet into the required side yard setback, and 33 feet would remain between the outside wall of that addition and the closest dwelling unit. In addition, the increased in elevation between Applicants' property and the adjoining parcel will aid in reducing visibility of the proposed addition from the adjoining lot if adequate landscaping is installed.

The Hearing Examiner recommends approval of the Applicant's request, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setbacks than the distances requested herein.
3. That the Applicants submit a landscaping plan to the Department of Planning and Zoning for review and approval prior to submission of the permit for the proposed garage.

Date AUGUST 29, 2005

Rebecca A. Bryant
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on SEPTEMBER 27, 2005.